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GRAND INQUEST OF MARYLAND

Minority Report of Paul Borman, Member of Grand Inquest Committee,

To the General Assembly of Maryland, 1929.

Submitted March 30, 1929.

I sincerely regret the necessity of having to file an individual report giving my own thoughts as to the results of the investigation of the affairs of the Maryland State Roads Commission by the Joint Grand Inquest Committee of the General Assembly of Maryland.

When we began the investigation, it was my hope that it would be full and complete and the Committee would be unanimous in its findings. I waited until the tentative report recommended by the Council to the Committee was submitted and thoroughly discussed before deciding that a minority report should be filed. I spoke to the Minority Floor Leader in regard to this and he submitted to me a report prepared by him and concurred in by two other Republican Members of the Committee.

After carefully examining this report I came to the conclusion that I could not sign same and adopt it as my findings on the facts submitted before the Committee. While fully concurring in a great many of the findings of the minority report, I entirely disagree with those in regard to the proof of the charges made against Senator Mitchell.

In my opinion the findings of the majority of the committee in regard to Senator Mitchell is a fair and correct conclusion and I fully concur in that part of the majority report.

Before discussing the majority report in detail, I think it proper to first consider the manner in which the investigation was conducted. The General Assembly of Maryland started the investigation of the affairs of the State Roads Commission as a result of the adoption of Joint Resolution #2, introduced by Senator Beck. The Committee was organized and began its work by selecting three of the most eminent counsel of the State of Maryland to assist and advise it.

The Council prepared a resolution giving the committee the necessary powers.

Among the powers contained in the resolution was one giving the committee the authority to continue the investigation of the State Road's affairs after the session of the Legislature, if it could not be fully and completely concluded before the session was over. This resolution was adopted unanimously and subsequently at the next meeting of the committee the action adopting the resolution was reconsidered and an motion made that part of the resolution which gave the committee the right to sit after the adjournment of the Legislature, was stricken out for "psychological" reasons with the understanding that if the investigation was not full and complete before the session was at an end, the General Assembly of Maryland would be requested to give the Committee authority to sit and conduct its investigation during the recess.

No one will seriously contend that the investigation was full or complete and although the suggestion was made that the Committee be given authority to sit after the session in order that the investigation might be substantially full and complete, this motion was voted down by the Committee.

Without going into detail to prove that the investigation was not nearly completed, I shall merely recite an instance where Counsel for the Committee, during the discussions of their report, admitted they should have additional testimony. This instance was when the Committee discussed the advisability of inserting in the report the testimony of Mr. Carroll relative to Mr. Dawson, (the Commission's Auditor), suggestion that it would not be necessary to go into the vouchers because he had thoroughly audited them. The counsel and some members of the committee did not think it fair to insert this in the report because Mr. Dawson was not given an opportunity to deny this statement. I suggested that Mr. Dawson be called before the committee again and either deny or explain it; which suggestion was voted down.

Another instance of the incompleteness of the investigation was the fact that the Committee decided to hear the testimony of a Mr. Charles L. Evers, one of the employees of the State Roads Commission, who was indicted for stealing from the State Roads Commission and subsequently pleaded guilty to the charge.

At the time Mr. Evers appeared before the Committee he refused to testify on advice of counsel, because he had not been sentenced at that time, but declared his willingness to testify after his sentence. Mr. Evers was sentenced to three and a half

years confinement on March 23th, and I suggested to the Committee that Mr. Ewers be recalled before the Committee to testify; this motion was voted down because of lack of time to hear him.

There were other witnesses requested to be brought before the committee by Mr. William Farnell Hall, and I think the committee should have summoned these witnesses, if for no other reason than to sustain the opinion of the committee, that they could not throw any light upon the investigation. On the whole it was apparent, after the investigation got well under way, that the committee did not intend to fully pursue the inquiries, but merely scratch the surface and leave a good deal of the inquiry with other agencies investigating the affairs of the State Roads Commission.

This procedure may have been proper, but it was certainly contrary to the expressed purpose of Joint Resolution #2, which provided that it is the intention of the General Assembly of Maryland to conduct a full and complete investigation of the affairs of the State Roads Commission.

In order to make this report as brief as possible I will comment on some of the findings of the majority of the committee, and my findings as I go along.

The majority of the committee find that the system failed for two reasons; first, because of the dishonest combination of a number of the employees and second, because of failure of the auditors to properly discharge their duty. I cannot agree that there are only two reasons for the failure of the system. There are a number of other reasons for the failure, which were brought out by the testimony submitted to us. To wit: The authorization of subordinates in the office to issue and sign checks for supplies furnished the commission. This should have been handled through the Comptroller's Office, as a number of other State Departments are handled. Checks should not have been issued on vouchers prepared on forms provided by the State Roads Commission, but should have been issued only on original vouchers furnished by merchants.

It strikes me as peculiar that the majority's report in reference to the failure to properly audit, makes no comment whatever on the testimony of Carroll in connection with Dawson's attempting to persuade him not to examine the inside of the vouchers. I requested the Committee to comment on this, but they saw fit to only

put in the report that Carroll testified after Dawson. The Committee spent nearly two pages of the report in discussing Butler's testimony in an attempt to discredit it. Why they did not attempt to analyze this statement of Carroll's is beyond me. To my mind it was one of the most important pieces of testimony developed by the Committee. If Carroll, the State Auditor, had taken Dawson's suggestion and not examined the inside of the vouchers, it is possible and probable that the thefts from the State Roads Commission would not now be discovered and if ever discovered, would have amounted to a staggering sum.

I should like to call particular attention to the following statement contained in the majority report, in order that the general public might realize just how dangerous a precedent is being set up by the adoption of this part of their report. It is taken from page 11, of the majority report:

"It has been suggested or charged that such extensive and long dishonesty on the part of so many of the employees of the Commission, could not have existed without the fault of the Commission itself, or its Chairman. The suggestion has been made in this connection that an individual would not have been defrauded over such length of time, and of such amounts, without sooner becoming aware of it.

We think such a charge is radically unjust both to the Chairman and to the other Member of the Commission. They relied and were entitled to rely, so long as no facts were brought to their attention which aroused their suspicions, upon the auditing of the accounts by the officials who were charged with that duty; that is to say, in the first instance, and primarily, by the office auditor; and also as we have said by the State Auditing Department."

If the majority of the Committee is serious in this finding, each Executive of a State Department, is relieved from the necessity of giving any attention to details in regard to the management of his office, and in the event of a shortage in any of the State Departments, it will only be necessary for the State official, when the shortage may occur, to point to page 11, of the report of the Grand Inquest Committee of Maryland for complete exoneration of failure to perform his duty. While we are on this particular subject I want to call attention to the fact that the Chairman of the State Roads Commission, knew and permitted the auditor in his department to do outside work, although he testified that the outside work was done after hours. HAX

no matter when this outside work was done, the Chairman of the State Roads Commission should not have permitted an employee, so vital and important to the proper management of the office to give any attention whatever to any outside work. It merely goes to prove the old adage that "a man cannot properly serve two masters".

I criticize the Chairman of the State Roads Commission for not knowing his subordinates better. In eight years he certainly had ample time to learn something of their personal habits. The testimony showed that he did know Butler (one of the ring leaders in the stealings) was dealing with a bookmaker, a fact which should have put an ordinarily prudent executive on his guard. As pointed out by the majority report, the heavy duties of Mr. Mackall made it difficult for him to faithfully discharge his engineering duties and obligations and at the same time maintain intimate contact with the administrative details of the Commission's affairs. In this I concur.

The combining of the offices of the Chairman of the State Roads Commission and Chief Engineer was a serious mistake. This mistake was made by the Chief Executive of the State of Maryland. If he had given proper attention to his duties as Governor, it would have been quickly discovered. The combining of offices was an experiment and he should have given particular attention to see that it was working out properly. Six months after this experiment, if he had investigated, he could have found out that the burden was too heavy for any one man and the two offices could have been separated. Why this experiment was not properly watched, I do not know. This is for the public to judge.

Mr. Mackall tried to carry out his duties in both offices and it would not be fair to place all of the responsibilities on his shoulders, in fact, in my opinion, very little of the responsibility for the thefts can be traced to him directly. From the evidence produced before us, I sincerely believe John Mackall to be an honest man and absolutely had no part, nor was he cognizant of any of the stealings going on in his office.

The Committee has taken great pains in pointing to precedent to justify the illegal awarding of contracts under Mr. Mackall's administration. It could just as well have cited the precedent of stealings in the State Roads Commission's Office, before Mr. Mackall was Chairman, in order to justify stealings after he became Chairman. I do not mean to convey the impression that the stealings were

ever attempted to be justified by the Committee, but they have attempted to justify the lack of supervision of the State Roads Commissioners. From Mr. Mackall's testimony, we learn that the man who held the position as State Auditor before Mr. Mackall was made Chairman, stole approximately \$2,500 of the money of the State Roads Commission. There is still due from this man to the State Roads Commission the sum of \$1,900, being some of the money he stole, which is carried on the books of the State Roads Commission as accounts receivable.

If the Governor had given the proper attention to this Department, he could have realized from this former stealing, that while the office of Chairman of State Roads Commission and Chief Engineer was separate thefts were possible; how much more possible thefts would become by shouldering additional burdens on the Chairman of State Roads Commission is readily recognizable by anythinking person.

The charges against Mr. Mackall for toy-soil, thermometers and other items are so trifling and insignificant, that they do not deserve comment, except to point out if John Mackall wanted to steal he had opportunities to steal thousands and no sensible person would believe that he would stoop to stealing trifles.

I will adopt the comment of the majority of the Committee in reference to the Southern Maryland Society transactions. As to the road celebration and purchase of silver, I think the Committee should have inserted in their report the amount of loss suffered by reason of the fact that the silver purchased for the Crain Highway opening celebration, was not used. From my recollection, this sum was approximately \$700, and I think the public in this report should have known it. This loss should never have been sustained by the State of Maryland.

In regard to contracts let by the Commission, there was some evidence of favoritism. Mr. Mackall should not be made to stand the whole brunt of this criticism, I think the other members of the Commission were equally guilty.

From what I could see, the office of the State Roads Commission was used by the Administration for the purpose of playing politics and no matter how upright and honest public officials may be, they are always subject to pressure from political henchmen, and the favoritism shown in awarding of contracts resulted from this pressure.

I cannot agree with the majority report that merely because other administrations illegally let contracts, that this was any reason for the State Roads Commission to follow the illegal precedent. In this first place, there was no proper evidence before the Committee as to what the practice of other Commissions were, in regard to extensions, over-runs and extra work, therefore, the comparison is not justified.

I will not further comment on the letting of contracts, as I think this is fully covered in the other two minority reports filed, and in most of the comments I fully concur.

I also concur in Mr. Joseph's findings in regard to the investigation of surplus war material and cannot help but feel that a good deal of information could have been uncovered, if a proper investigation of this phase of the matter had been made.

From the evidence before us, Mr. Mackall was an exceedingly good Roads Engineer and at the same time a very poor office executive.

I have never heard any justification for requesting Mr. Mackall's resignation; from the evidence produced before us, there certainly was no justification for this action. He undoubtedly should have been relieved of the duties of Chairman of the State Roads Commission.

CONCLUSION.

It might be true, as stated in the majority report, that nothing of importance which has been brought to the attention of the Committee was omitted from the majority report, but it is also a fact that very little of the available evidence in regard to the affairs of the State Roads Commission was brought to our attention, or sought by the Committee.

The General Assembly was extremely and exceedingly anxious to have a full and complete investigation, when the Session began, but their enthusiasm cooled greatly as it progressed, and on Thursday, March 28th 1929, when the reports prepared by the Council was discussed, it was practically zero, if not below.

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The investigation should either have been full and complete, as contemplated by Joint Resolution No. 2, or should never have been started. The result of the whole investigation was nothing but a waste of approximately Twenty-five thousand dollars of the tax payers money and nothing was uncovered that was not already known by the public.

I want to take this opportunity to congratulate the counsel for their extreme patience and the attention which they gave the matters which were permitted by the Committee to be brought out.

Respectfully submitted

(Signed) Paul Herman.

